

Running Head: BEST AFFORDABLE HOUSING POLICIES

Best Affordable Housing Policies;  
A Look at California, New Jersey, and Massachusetts

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## Table of Contents

Government Involvement in the Housing Sector .....	3
History of Policies .....	3
Housing Acts .....	4
Is There an Affordability Crisis? .....	6
Definition of Housing .....	6
What is Affordable? .....	6
Definition of Housing .....	6
Availability of Affordable Units .....	7
Definition of Affordable Housing .....	7
Indicators of Affordability Crisis .....	8
The Current Federal Policies .....	10
Housing Choice Voucher Program .....	10
Issues with the Housing Choice Voucher Program .....	10
What is Causing the Affordability Crisis? .....	12
Decline of Household Income .....	12
Zoning Responses to Affordable Units .....	13
Federal Subsidy Programs .....	14
Possible Solutions for Affordable Housing .....	15
Zoning Ordinances .....	15
Growth Share Requirements .....	17
Inclusionary Zoning .....	17
Density Bonuses .....	18
New Jersey Case Study .....	20
Introduction .....	20
New Jersey's Approach .....	21
New Jersey's Fair Housing Act .....	21
Development Fees .....	22
New Jersey Council on Affordable Housing .....	22
Conclusion .....	24
Massachusetts Case Study .....	25
Introduction .....	25
The Anti-Snob Zoning Act .....	25
Critique of Anti-Snob Zoning Act .....	26
Conclusion .....	27

California Case Study .....	28
Introduction .....	28
Conclusion.....	29
 Indiana’s Example to Follow.....	31
Introduction .....	31
Best Program to Implement.....	31
 References .....	33

## Government Involvement in the Housing Sector

### *History of Policies*

The earliest studies on the improvement of housing conditions for lower-income persons occurred in the late 1800s, which portrayed personal experiences rather than scientific analyses. From the late 1800s to the early 1900s, not much attention has been focused on the housing sector or the affordability of housing. When the banking system collapsed in 1929, the United States government was compelled to become involved in the national housing crisis. As a result, in the mid 1930s, FDR implemented the Public Works Administration to provide employment by creating several billion dollars worth of construction. However, Public Works Administration housing was available only to families with low income, which caused problems many years later. Direct federal expenditures on housing began with the Public Housing Act of 1937, which was intended to remedy the acute shortage of housing through a federally financed program.

In the 1930s, the Federal Housing Administration (FHA) and the Homeowners Loan Corporation (HOLC) created a methodology that evaluated the value of the land. Then, HOLC purchased and refinanced mortgages in default from financial institutions to reduce foreclosure rates but redlined minorities from purchasing homes. During the 1960s and 1970s, government agencies sought to guarantee equal access to open housing, but at the same time, cities metamorphosed into highly suburbanized metropolitan areas, making it

difficult for the fragmented local governments to distribute housing for the poor or minorities.

*The FHA Techniques of Housing Market Analysis* published by Housing and Urban Development (HUD) in 1970 failed to address regional planning issues, although the manual intended to provide guidelines for estimating housing demand for the nation's housing market. The first fair-share regional allocation plan for low- and moderate-income housing was set up in Dayton, Ohio in 1970. This plan established common housing goals for local governments in Ohio, but did not reach statewide control. *The Regional Housing Planning: A Technical Guide*, published in 1972 by the American Institute of Planners, focused on regional new housing projections and analyzed them. The guide however did not address the needs for low- and moderate-income housing.

### *Housing Acts*

A few years later, the Federal government decided to implement policies to break down the barriers of prevailing practice, where separate categorical programs would lead to conflicting decisions among communities. "The Housing and Community Development Act of 1974 required local governments applying for federal grants to adopt a Housing Assistance Plan (HAP) that included both a comprehensive assessment of the housing needs of low- and moderate-income households and an action plan for meeting those needs" (Meck, 2003, p. 12). The amended Housing and Community Development Act of 1977 then created Area wide Housing Opportunity Plans (AHOPs) to evaluate local governments' HAPs to determine if the local governments provided adequate affordable housing. Over twenty sections have been added to the Act ever since the implementation in 1974.

In the 1990s, the Congress found that the nation has not made adequate progress toward the goal of national housing policy and the supply of affordable rental housing was diminishing, so they passed the Cranston-Gonzalez National Affordable Housing Act. “Since 1990, the Cranston-Gonzalez National Affordable Housing Act has also required local governments seeking assistance under that act to prepare a ‘comprehensive housing affordability strategy’ ... and submit the strategy and updates to HUD for its approval” (Meck, 2003, p. 13). “The number of cities with affordable housing mandates has grown rapidly to about 10 percent of cities over 100,000 population as of the mid 90s, and many advocacy groups predict the trend will accelerate in the next five years” (Powell, 2004). However, to diminish the improvement of policies, during 1995 to 2005, the federal government reduced housing subsidies by 40 percent, regardless of the decrease of affordability for housing during this time period. “Only one percent of grant proceeds are used for tenant-based rental assistance” (Quigley, 2007).

## Is There an Affordability Crisis?

### *Definition of Housing*

“Although some housing may come in luxurious forms, the public generally views basic shelter as a necessity that has no substitutes” (Meck, 2003, p. 20-21). Housing is a basic necessity for every individual, no matter if he lives. Another aspect of housing is its affordability. Affordable housing means different things to different people, for each person can afford something different. Every policymaker is faced with the challenge of statistically defining affordable housing and providing them to those who need it.

### *What is Affordable?*

“Most policymakers consider housing affordable if it consumes less than 30 percent of a household’s gross income. If housing costs are higher than that, families must choose between shelter and other basic needs and will struggle to weather financial setbacks” (Marohn, 2009). As we analyze the many causes of affordability, we are forced to look at the issue, is there an affordable housing crisis? “Beginning in 1995, a decade of condo conversions, housing speculation, and gentrification resulted in a significant 17% shrinkage in the number of units affordable to renters earning less than \$16.00 [which is the median hourly wage in this country]” (Out of Reach, 2008). In 1999, there was a severe gap between the available rental supply of affordable units and the demand, which produced a shortage of

1.8 million units. “By 2007, the average extremely low-income (ELI) renter household spent an extraordinarily high proportion of its income on housing costs, largely because the 9.0 million households in search of affordable rental housing were competing for only 6.2 million affordable units” (Out of Reach, 2008).

#### *Availability of Affordable Units*

In 2002, there were about one million privately owned apartments under short-term federal subsidy contract, which allowed them to change the rentals to market rate housing when the contract expires. When the short-term federal subsidy contracts expire, the supply side of affordable housing is definitely a contention.

“New housing production has chronically failed to meet housing needs, causing housing prices to escalate” (Powell, 2004). Simply, there is not enough affordable housing, as one move down income levels, the challenge of finding affordable housing in high-cost areas increases. “The number of units that rent for \$400 per month or less, in inflation-adjusted terms, drops by about 200,000 each year, largely because of either gentrification or decay” (Affordable Housing, 2007, p. 289). Due to recent events with the housing bust, we are also facing the large displacement of households by foreclosures. This displacement can increase the demand of rental units by 40 percent, which will congest the affordable housing market.

#### *Definition of Affordable Housing*

Approximately one in four American families were spending more than 30 percent of their income on housing in 1999, which was above the federal affordable and appropriate threshold. The 30 percent threshold is widely used by many organizations since it is indicative of how people make housing choices and pay for all of the other living expenses.



“In reality... spending more than 30 percent of income for many lower-income households is a significant hardship... under these definitions, 13.4 million renter households and 14.5 million owner households (2002) have housing affordability problems” (Millennial).

Between 2001 and 2004, the Harvard Joint Center for Housing Studies found that “the number of households paying more than 30 percent of their income toward housing increased from 31.3 million to 35.0 million...” (Affordable Housing Overview, 2007). The same study found that one in seven American Households spent more than half its income on housing, making them severely housing cost-burdened (2007). In 2005, HUD estimated that approximately 6.0 million very low-income families were either living in substandard housing or severely burdened by their housing costs.

#### *Indicators of Affordability Crisis*

Between 2000 and 2007, the number of renters spending over 30 percent of their income on housing increased from 13 million to over 18 million. “During the same time period, the number of cost-burdened homeowners nearly doubled, going from 12 to 23 million” (Mallach, 2009, p. 34). Not only the desperately poor overspend on housing, but also the middle two income quartiles spend more than the 30 percent recommended guideline on housing.

In its 2007-08 annual report, *Out of Reach*, the National Low Income Housing Coalition (NLIHC) calculated that to pay the nation’s average fair-market rent for a two-bedroom rental apartment, a full-time worker must earn \$17.32 per hour, 2.5 times the minimum wage (Doster, 2009).

The cost of housing has risen dramatically, to the point where today, the majority of lower income households are heavily burdened by excessive housing costs. There is no county in

the U.S. that has even a one-bedroom unit at the fair market rent (FMR) affordable to someone working full-time at the minimum wage.

The foreclosure and economic crises have only widened the persistent gulf between affordable rents and the incomes of low-wage workers, both by increasing the demand for low-cost units and by decreasing the opportunities for families to make ends meet through gainful employment (Out of Reach, 2008).

## The Current Federal Policies

### *Housing Choice Voucher Program*

With its major program for assisting very low-income families, the federal government assisted less than 100,000 renters before the 1950s and increased to 6 million in 2002 through the Housing Choice Vouchers Program. HUD operates the program by allocating funding to local housing authorities to distribute to low-income individuals and families.

However, only one in three families eligible for rental assistance received it. Even those lucky few to receive the voucher are faced with difficulties to find affordable housing. “A 2000 study found that only 47 percent of families receiving vouchers in Los Angeles and 57 percent in New York City were able to find an apartment meeting the program [Housing Choice Voucher] standards” (Mallach, 2009, p. 35).

### *Issues with Housing Choice Voucher Program*

One of the issues with the housing choice vouchers is the misallocation of funding, especially according to current events. Most of the funding is dedicated to rental subsidies rather than actually increasing the supply side of affordable housing. For now, there are many affordable housing units in great need of rehabilitation and reconstruction. There is a proven need for a greater supply of affordable housing, but “for the 2007 fiscal year, HUD

planned to spend nearly \$22 billion on vouchers, while spending only \$5 billion to build or rehabilitate affordable housing units” (Mallach, 2009, p. 34). The shift toward production of more expensive apartments in the last two decades has led to lack of federal support for the housing sector, especially by not providing enough funding to ensure proper physical maintenance of existing programs. “In most growing metropolitan areas, this goal [de-concentrating poverty] cannot be achieved by enhancing housing demand through vouchers because of the high price and limited supply of housing in the region’s opportunity-rich areas” (Mallach, 2009, p. 35). No program ensuring the availability of affordable housing would survive without the underlying belief that our society has an obligation to provide some measure of equity in access to housing.

## What is causing the Affordability Crisis?

### *Decline of Household Income*

The executive director of the Minnesota Housing Partnership, Chip Halbach, had stated that the rise of the housing affordability crisis is mostly attributed to the decline of household incomes today. “The Joint Center for Housing Studies’ report attributes the growing affordability problem to two principal factors: land use regulations that drive up the price of housing and the growth of low-wage jobs” (Affordable Housing Overview, 2007, p. 320).

As we discuss the two major arguments surround the cause of affordability crisis, we examine the supply issues and the demand issues. Cost burden is a major issue facing most Americans today, when families spend too much for housing and have difficulties to pay for other necessities of life. “Another reason for the affordable housing shortage is that over the last decade or so, Federal policies have emphasized homeownership over other options – even though about a third of all households still rent” (Affordable Housing, 2007, p. 289). The constraints on production and preservation of affordable housing include inadequate financing for housing developments, development controls, limits on owners’ profits, and poor federal tax policies. Market failure and government inaction; such as restrictive zoning regulations have led to a significant underproduction of affordable units.

*Zoning Responses to Affordable Units*

As housing trends changed from the early 1900s to today, we have seen the square footage of housing units increase as well as the cost of construction for a new unit. One of the important reasons why many suburban areas lack affordable housing is the Not-In-My-Backyard (NIMBY) response to low-income housing. In some areas of the United States, the NIMBY problem contributed to higher housing prices due to excessive growth controls, exclusionary zoning ordinances, and unnecessarily drawn-out permit and approval processes. "...Wealthier communities were using their local land-use control authority prerogatives to create levels of economic homogeneity and segregation that had never existed in central cities" (Meck, 2003, p. 2). "The poor who live in inner-city neighborhoods often watch helplessly as gentrification produces benefits for new, wealthy residents while it eliminates access to affordable housing..." (Meck, 2003, p. 2). 'Exclusionary' zoning was the key way many communities have kept lower income families from moving into the community by requiring large minimum lot sizes and large minimum floor areas.

"First, there is a pressing need to increase the level of public investment in affordable housing and supportive community development infrastructure in cities across the country" (Silverman, 2008, p. 31). Public opposition is great against publicly assisted, low-income housing and is strongest among suburbanites who equate it with the physical decline of neighborhoods common in central cities. "Its [affordable housing] association with public housing projects and Section 8 Vouchers – immensely stigmatized programs – makes affordable housing a difficult sell for middle-class voters" (Doster, 2009). A great share of rental housing affordable to lower-income families is located in neighborhoods with a lack of job access or adequate facilities and services. Also, higher-income households grab the

lower rent apartments in an effort to decrease monthly expenses, which shut out lower-income households.

The inexorable growth in the numbers of families... coupled with community opposition to high-density development, the gentrification or abandonment and deterioration of an increasing percentage of our housing stock, and the growing affordability gap between haves and have nots – require that the Government of the United States seriously address the question of how our society can produce and preserve more housing for more American families... (Millennial, 2002).

#### *Federal Subsidy Programs*

The Section 8 Housing Choice Voucher Program aims for providing subsidies to individuals and families to live in available housing units. Even though the program provides some funding for new or rehabilitated housing units, there is a great need to increase the funding since the supply side of housing has not met the demand side. The fact more people in the United States require vouchers every year portray an extreme income problem, where people are not earning enough to keep up with the increasing housing costs.

## Possible Solutions for Affordable Housing

### *Zoning Ordinances*

In order to address the problems in the availability of affordable housing, we must strengthen communities, pass over decision-making powers to state and local governments, provide attractive incentives to the private sector, and design programs to preserve the stock of affordable housing over the long run. “Successful experiments that have produced affordable housing do exist; but many metropolitan areas have yet to find a balance of forces capable of creating institutional structures and financing mechanisms that can sustain effective programs” (Meck, 2003, p. 3). Due to the neglect of the affordable housing supply, it is important to convince lawmakers, developers, and taxpayers of the benefits in affordable housing construction.

On average, 69.3% of local governments in the United States provide fair housing ordinances (Silverman, 2008, p. 28). Only 31.1% earmark local revenue from local taxes and/or fees for affordable housing. At even less, only 26.2 percent operate housing trust funds (HTFs). “... Public entities often prefer to provide one-time capital funds to finance additional affordable housing, rather than make the long-term commitment of funds year after year to address the demand side through vouchers” (Mallach, 2009, p. 36).

There is no data to prove that property values are affected by the introduction of affordable housing, especially when they are mixed with market rate housing. “We could



take a cue from France, where much of the new affordable rental housing is included in mixed income condo projects, financed through partnerships between nonprofits and private developers” (Mallach, 2009, p. 36). “Foundations and other national organizations need to assist local government in developing local decision-making models that incorporate CBOs [Community Based Organizations] into the policy-making process” (Silverman, 2008, p. 31).

“A mandatory program that provides developers with basic alternatives can survive both takes and due process challenges so long as there is a legitimate state interest” (Lerman, 2006, p. 390). In the western United States, the preexisting enforcement mechanisms for other statewide planning and zoning requirements provide a great platform for adding affordable housing fair-share allocations. State oversight, coupled with comprehensive plans, is proven to be successful for fair-share allocations.

“In addition to creating a plan, municipalities should be required to legislatively enact an inclusionary program, specifying the ‘percent of units required, affordability level, resale provisions, deed restrictions, physical standards for the affordable units, price and rent levels, [and] selection of tenants and buyers” (Lerman, 2006, p. 410).

Many local municipalities utilize traditional land-use tools with low-density zoning, which greatly restricts residential densities, thus reducing rental housing typically found in higher-density zones. “Today, land is no longer cheap, and zoning codes that mandate larger minimum lot sizes can substantially increase housing development costs” (Breakthroughs, 2008). Smaller lots for areas zoned for higher-density would reduce land and construction costs, therefore increasing the affordability of housing for low- and moderate-income families. As an example, “developers can build several detached units as small as 600 square feet on subdivided lots, without the liability issues and insurance costs associated with a condominium project” (Breakthroughs, 2008). By allowing smaller lots and house sizes,

reduced setbacks, and reduced design requirements, the housing supply would increase coupled with a decrease of housing costs.

### *Growth Share Requirements*

To measure a municipality's affordable housing needs, we analyze the actual growth that takes place and compute the growth share. As an example in New Jersey, 'under growth share, one unit among every five housing units created in a municipality must be affordable; one affordable housing unit must be provided for every 16 jobs created in a municipality measured by new commercial development' (State, 2007). "... The growth share approach encourages municipalities to adopt plans and zoning ordinances that retard growth in order to minimize their fair share allocation" (Lawlor, 2007). The growth share can be mandated by the state and passed down as a responsibility for the municipalities or counties.

### *Inclusionary Zoning*

"Inclusionary housing programs and ordinances, including voluntary or mandatory density bonuses for affordable housing, first appeared in the 1960s as a policy response to exclusionary zoning practices by local governments" (Morris, 2000, p. 4). Many state and local governments have implemented inclusionary zoning measures, which ensure a certain amount of affordable units in new construction. "Inclusionary zoning is a means of remedying the economic segregation in housing that has resulted from decades of local governments' widespread use of large-lot zoning, large minimum house sizes, and the near exclusion of multifamily or other affordable housing" (Morris, 2000, p. 29). Inclusionary zoning ordinances may include mandatory set-aside provisions, which are portions of the units being designated as affordable, density bonuses, and waiving certain regulatory

requirements. Also, the ordinances may mandate a percentage of affordable units, define the income levels, and require a period for the units to remain affordably priced. Developers are then usually provided with incentives, such as a density bonus. “An inclusionary housing ordinance is not an impact fee or development exaction – it is a land use regulation, one grounded in sound legal authority and indeed a best practice for local governments to use whenever its exercise of land use authority increases the value of private property” (Ross, 2008, p. 4).

### *Density Bonuses*

“Density bonus law, however, allows public subsidies to be reduced or even eliminated by allowing a developer to include more total units in a project than would otherwise be allowed by the zoning in order to spread the cost of the affordable units over the project as a whole” (Senate of CA, 2008). When a local government provides density bonuses to developers, the community stands to benefit from amenities that are created, such as daycare, affordable housing, and streetscape improvements. “In general, the value of the bonus (e.g., the increase in floor area) should be proportionate to the cost of the developer providing the amenity” (Morris, 2000, p. 11). There are two ways to grant bonuses; through a discretionary process, which allows the city to negotiate the bonuses, or as-of-right incentive zoning, which spells out exactly what the developer would get for each element in the plan. However, density bonuses and regulatory waivers must be used in concert with direct subsidies in land zoned for various income groups in order to be most effective.

Incentives may include reduction on site development standards, approval of mixed use zoning, and modification of zoning code requirements. “The idea is to cover at least some of the affordability gap with regulatory incentives rather than additional subsidy”

(Senate of CA, 2008). The adjustment of site development standards is faced with strong opposition in the public and private communities. “Changing the standard to require a municipality to grant developers additional incentives is simply wrong,’ she [New Jersey Department of Community Affairs Commissioner Susan Bass Levin] said” (Lawlor, 2007). However, it is clear incentives are necessary for developers to be motivated to provide affordable housing to the community.

The first housing trust funds were set up in the 1970s and they generate more than \$1.6 billion per year today, playing a critical role in developing and maintaining affordable housing. Housing trust funds (HTFs) generate public revenue to be used to construct housing developments with affordable units. The common source of revenue for HTFs is real estate transfer tax, which is administered by the state or local government agencies. Other sources may include developer fees, property taxes, sales tax, and permit application fees. “They [supporters] argue that the [housing] trust fund will address one of the country’s most serious social and economic problems in a manner that is fiscally responsible and adaptable to the specific needs of states and localities” (Affordable Housing, 2007, p. 289). The HTFs are intended to alleviate the affordable housing crisis and allows local municipalities to incorporate the affordable units within their comprehensive plans. “Many cities do not have housing trust funds or earmarked taxes and fees to support community development” (Silverman, 2008, p. 31). There is a clear need for organizations to develop fiscal systems for local governments to use to provide affordable housing units in their communities.

## New Jersey Case Study

### *Introduction*

In New Jersey, minimum wage is only \$7.15 per hour, even though, to be able to afford the Fair Market Rate (FMR) for a two-bedroom apartment, one must earn \$23.12 per hour.

The National Low-Income Housing Coalition (NLIHC), a Washington, D.C.-based think tank, stated that in New Jersey, a family needs to make about \$22 per hour in order to afford a standard and basic two-bedroom apartment. This is nearly \$6 more an hour than New Jerseyans' average hourly wage of about \$16 per hour (Townes, 2008).

In New Jersey, “a typical two-bedroom townhouse would sell for \$81,000 and a typical two-bedroom apartment would rent for \$700. A unit is generally considered affordable if the owner pays approximately 28% (30% for renters) or less of his/her gross income on housing costs” (State, 2007). Between 1980 and 2000, 60,731 low- and moderate-income housing units were made available, which represents approximately 51 percent of the total predicted need and 70 percent of the calculated need for affordable housing.

### *New Jersey's Approach*

“New Jersey is an example of a state that has adopted a top-down approach to affordable housing as a consequence of a series of state Supreme Court decisions” (Meck, 2003, p. 32). The *Southern Burlington County NAACP v. Township of Mount Laurel* (67 NJ 151, 336 A. 2d 713 (1975) and the second supreme court case in 1983 led to the state of New Jersey mandating all municipalities to share in the obligation to provide the opportunity for the development of affordable housing. The New Jersey Supreme Court (1975) “determined that every municipality in a growth area has a constitutional obligation to provide through its land use regulations a realistic opportunity for a fair share of its region’s present and prospective needs for housing for low and moderate income families” (NJ Department, 2009).

The Supreme Court determined that the realistic opportunity for affordable housing is a constitutional obligation and provided guidance in determining a municipality’s fair share, while allowing a builder’s remedy clause for municipalities that do not voluntarily meet their obligation. “The interest of all citizens, including low and moderate income families in need of affordable housing, would be best served by a comprehensive planning and implementation response to this constitutional obligation” (NJ Department, 2009). “In its 1983 *Mt. Laurel II decision* the Supreme Court reaffirmed and expanded the Mt. Laurel doctrine and stated that all municipalities share in the obligation [fair-share]” (State, 2007).

#### *New Jersey’s Fair Housing Act*

In July 1985, the Fair Housing Act (FHA) was enacted as the legislative response to the New Jersey Supreme Court rulings. “The Fair Housing Act of 1985 permits a municipality to transfer up to 50 percent of its affordable housing obligation to another municipality within the same housing region” (COAH, 2003, p. 26). The transfers are

referred to as regional contribution agreements (RCAs), which make it possible for sending municipalities to receive housing credits and the receiving municipalities to generate funding for more affordable housing units.

The Regional Contribution Agreement (RCA) is an amendment to the Fair Housing Act and will impose a surcharge of 2.5 percent on non-residential construction or improvements in order to increase revenue for the construction or rehabilitation of affordable and workforce housing in New Jersey (Townes, 2008).

“Since January 2001, the cost per unit transferred has been \$25,000” (COAH, 2003, p. 26).

#### *Development Fees*

“A 1990 New Jersey Supreme Court decision, *Holmdel Builders Association v. Holmdel Township* (121 NJ 550, 583 A. 2d 277 (1990)), permitted the collection of mandatory development fees for affordable housing, and the deposit of these fees into a low- and moderate-income housing trust fund” (Meck, 2003, p. 40). In 2007, there were over \$200 million in unspent development fee funds in the housing trust fund available for building affordable housing in New Jersey.

#### *New Jersey Council on Affordable Housing*

The New Jersey Fair Housing Act of 1985 established the New Jersey Council on Affordable Housing (COAH) to oversee the implementation of the *Mt. Laurel* doctrine. “The Act created COAH as the voluntary administrative alternative to the courts. The Act also stipulated that while COAH is a voluntary process, no participating leaves municipalities at risk of a builder’s remedy lawsuit” (State, 2007). Since 1986, COAH has facilitated the creation of affordable housing units in New Jersey. Through the end of 2003, 34,896

completed affordable units were built and 13,874 rehabilitated. “COAH is an 11-member body appointed by the governor on the advice and consent of the state senate. The members of COAH represent local government, providers, and users of affordable housing, and the general public” (Meck, 2003, p. 33).

COAH determines the prospective needs for affordable housing at the state and regional levels and allocates a fair share obligation to each municipality. “In New Jersey, CUPR [Center for Urban Policy Research at Rutgers University] has been responsible for the New Jersey Council on Affordable Housing (COAH) numbers for municipalities of the state” (Center, 2009). CUPR has calculated the principal affordable housing numbers for 2004’s “Growth Share” ratios. However, COAH has several shortcomings, “although the New Jersey program attempts to plan on a regional level, COAH has no authority to enforce the fair share requirements should a community propose a housing plan that does not meet minimum standards” (Lerman, 2006, p. 401).

As an example of COAH’s weaknesses, I examined a court case that led to the court requiring COAH to improve its policies. COAH has assumed the filtering theory would satisfy some of the affordable housing demand between 1987 and 2004. “The filtering theory assumes some housing will become less expensive over time, thus becoming affordable for low- and moderate-income households” (Fair Share, 2007). “The court [state’s intermediate appellate court] concluded that the filtering premise was not supported by the record. COAH offered no data establishing that housing is becoming more affordable in New Jersey...” (Fair Share, 2007). The court said it would not invalidate the use of filtering as a secondary source, but that the state’s affordable housing council must provide more reliable data to support it. “As a result of the court’s 2007 decision, COAH has identified a need for 115,000 affordable units statewide over 20 years between 1999 and 2018, or about 5,700 units



annually” (State, 2007). The statistics reflected the exclusion of the filtering theory, since it is clear housing is not becoming more affordable over time.

### *Conclusion*

New Jersey portrays the best program to adopt in other states, especially since New Jersey has a precedent in the Supreme Court. More power needs to be given to the governing body to ensure the housing supply is being met. Development fees and incentives are great policies to implement in a state to promote private organizations to build affordable housing and avoid litigation for undue takings.

## Massachusetts Case Study

### *Introduction*

In Massachusetts, minimum wage is only \$8.00 per hour, even though, to be able to afford the FMR for a two-bedroom apartment, one must earn \$22.97 per hour. “In 1969, Massachusetts became the first state to create a state-level housing appeals board empowered to provide for a direct appeal and override of local decisions that reject or restrict proposals for low- or moderate-income housing” (Meck, 2003, p. 15). “Passed in 1969 – and one of the first such laws in the nation – Chapter 40B of the Massachusetts General Laws, known as the Anti-Snob Zoning statute, has been viewed as both a blessing and a curse” (Flint, 2004, p. 28).

### *The Anti-Snob Zoning Act*

The intended purpose of the Anti-Snob Zoning Act was to provide much-needed housing for returning Vietnam veterans, and to break down the barriers erected by the suburbs to the construction of affordable sale and rental housing. “Chapter 40R provided incentives to build high-density multifamily and single-family housing near transit stations, in town and city centers, and at underutilized commercial properties” (Smart Growth, 2006, p. 7).

As with many other policies, there are a few clauses that may cause adverse effects on the local communities. “In any community where less than 10 percent of the housing is affordable... developers can override local zoning rules and get on a fast track to build residential projects that include low- and moderate-income units” (Flint, 2004, p. 28). This allowed the developers to place the residential projects anywhere they wish, regardless of the local comprehensive plans. “The [developer’s] sole obligation is to provide twenty or twenty-five percent of the dwelling units within the project for rent or sale to those designated by the subsidy program as meeting affordable criteria” (Witten, 2008, p. 231). Then, the developer received unlimited density and is not bound by any local regulations.

“Consistent with California’s planning legislation, cities and towns that fail to adopt or revise a comprehensive plan consistent with the mandatory planning requirements run the risk of their zoning ordinances and bylaws being declared void ab initio” (Witten, 2008, p. 256-257). The board of zoning appeals has no control over the project or process, allowing the developer to save time and money by not having to go through any lengthy approval process. “States as diverse as California, Maryland, and Rhode Island build more affordable housing units than Massachusetts through burden sharing between the developer and the community” (Witten, 2008, p. 253).

### *Critique of Anti-Snob Zoning Act*

Local government leaders regard Chapter 40B as a negative policy, leaving them with no control over where the development occurred and putting a big strain on local services and schools. In retaliation, the local governments made ample use of an appeals clause in the law, and tied up development projects in court for years. There is a complete lack of integration among the municipalities’ and developers’ interests, which can be resolved by

passing a legislation to require comprehensive plans in every municipalities that include fair share of affordable housing. “The [Massachusetts] statute is punitive; it obliterates all local land-use, fiscal, and planning control; it ignores that countless other critical issues facing cities and towns today; and it imposes a one-size-fits-all policy that insults the distinctions between Cape Cod and Cape Ann, the Berkshires and the Blackstone Valley” (Witten, 2008, p. 252).

### *Conclusion*

After 35 years, Chapter 40B has not changed one bit to reflect new events or loopholes that need adjusting, such as towns being able to tie up developments in court for years. Massachusetts needs to set up a system that has greater power over the implementation of the act and designate a governing body to oversee the every day operations, like COAH in NJ. Also, the state needs to take a regional approach like New Jersey and designate fair-share obligations according to regions and allow RCAs among those regions to alleviate any differences in communities like Cape Cod and the Berkshires.

## California Case Study

### *Introduction*

In California, minimum wage is only \$8.00 per hour even though, to be able to afford the FMR for a two-bedroom apartment, one must earn \$24.83 per hour, the greatest among New Jersey, Massachusetts, and California. “The ‘Housing Wage’ in California is... more than three times the minimum wage. A minimum wage worker would have to work at least 135 hours per week to afford the average two-bedroom unit” (California Department, 2009). A housing affordability crisis clearly appears in the state of California, as one of the states to suffer the most from the recent housing bust.

“Housing Element Law, enacted in 1969, mandates that local governments adequately plan to meet the existing and projected housing needs of all economic segments of the community” (California Department, 2009). The law acknowledges that, in order for the private market to adequately address housing needs and demand, local governments must adopt land use plans and regulatory systems, which provide opportunities for housing development.

One of the several amendments to the Housing Element Law, “legislation [SB 375] also aligns the mandatory fair share housing planning process with the regional transportation planning process – something that planners have requested for years – and requires cities to rezone land for affordable housing development” (Shigley, 2008, p. 46). A recent

amendment, Assembly Bill 2634 was passed in 2006 for the Housing Element Law of California. This amendment “requires localities to plan for housing that will be available to extremely low-income households” (Breakthroughs, January 2008). An example of a local ordinance that may become statewide is the small lot subdivision ordinance adopted by Los Angeles, California in 2005, which “allows subdivision of multifamily or commercially-zoned properties into lots for detached single-family or attached townhomes” (Breakthroughs, November 2008).

Under California’s existing laws, a developer constructing a specific percentage of affordable units will be given a density bonus, incentives, waiver of prohibitive development standards, and reduced parking standards by the city or county. When a jurisdiction does not comply with the housing element law, there are a few remedies the developers or any interested parties may pursue. A developer can build on any site identified for residential development, as long as it does not adversely affect the public health or safety of the residents. “Unlike the other mandatory general plan elements, the housing element is subject to detailed statutory requirements and mandatory review by a state agency, the Department of Housing and Community Development” (California Department, 2009).

### *Conclusion*

As of late 2007, 80 percent of California’s local governments have complied with the housing elements requirements, showing great achievement throughout the state. The Housing Element Law takes a great approach to states that already have a comprehensive plan requirement in place and incorporate housing elements into the plans. Like New Jersey, this allows a regional approach to fair-share obligations and allows a percentage so developers can adjust accordingly to the size of the proposed developments. Collaboration of

the Housing Element Law and New Jersey's fair-share will result in even a stronger statute, since California and New Jersey are the only states to have statutes.

## Indiana's Example to Follow

### *Introduction*

Indiana has no statutes to require fair-share allocation for affordable housing throughout the state. However, a characteristic common of the western states, Indiana has a comprehensive plan requirement for every municipality for future growth. The comprehensive plan requirement has a mechanism in place that makes the implementation of a housing fair-share allocation easier.

### *Best Program to Implement*

California and New Jersey are the only states that enforce fair-share regional allocation by statute, and New Jersey is the only one with a Supreme Court decision backing the statute. The court decision makes it more difficult for developers or municipalities to pursue the legalities of a development, since it is written clearly in the statute what is expected in each municipality. One of the flaws in New Jersey's policies is the weakness of its Council on Affordable Housing; since they are given responsibilities for fair-share allocation without the necessary policy power that zoning ordinances typically possess.

“The optimal approach is state legislation requiring mandatory inclusionary zoning by every municipality – permitting the municipality to determine the proper set-asides through general statewide guidelines – based upon a municipal comprehensive plan”



(Lerman, 2006, p. 409). Inclusionary zoning may be named many different ways, but the concept is simple, to allow building affordable housing units and not restricting the type of residential units that may be built in the county or municipality. Indiana should adopt a state statute requiring fair-share allocation and mandatory inclusionary zoning by each county and allow them to determine the ideal way to allocate the affordable units. The RCAs from New Jersey do not fit the county-level well, since Indiana Counties do not have the higher population density that New Jersey has to make the RCAs work well. Therefore, each county should ensure a certain percentage of affordable units among the towns according to population densities.

It is important for Indiana to adopt a fair-share allocation and face the growing issue of affordable housing, especially as unemployment rates rise and the supply of affordable housing falls. There is a proven housing affordability crisis everywhere in the United States, even in Muncie, Indiana.

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